

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7294 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MS LOKHANDWALA

Versus

FOOD CORPORATION OF INDIA

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Appearance:

MR US BRAHMBHATT for Petitioner

Ms. S.N.Pahwa for M/S THAKKAR ASSOC. for Respondent No. 1

SERVED for Respondent No. 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 24/04/97

ORAL JUDGEMENT

Petitioner herein is an employee of the respondent No. 1 Corporation [ hereinafter referred to as "the Corporation"] and is serving as Assistant Grade II [D]. The petitioner claims stepping up of his pay so as to bring it at par with that of one Shri Momin who

happens to be junior to the petitioner.

2. The petitioner was appointed under the Corporation as Assistant Grade-III [D] on 25th June, 1971 and was promoted as Assistant Grade II(D) on 7th January, 1985. On 10th March, 1989, the petitioner was receiving pay of Rs. 2070/-. It is undisputed that Shri Momin was junior to the petitioner in the cadre of Assistant Gr.III [D] and also in the cadre of Assistant Gr.II [D]. On 10th March, 1989 said Shri Momin was promoted as Assistant Gr.II(D) and his pay on promotion was fixed at Rs.2280/-. It is this anomaly in pay which is the cause of action and the petitioner claims that the petitioner's pay should be stepped up as on 10th March, 1989 to that of Rs. 2280/-.

3. On 30th December, 1992, the Corporation issued Circular No. 22 of 1992. Under the said Circular, the Corporation sanctioned Selection Grades in respect of category III and IV employees of the Corporation with effect from 1st December, 1987. Under paragraph 2(I) of the said circular, 30 % of sanctioned posts in each grade/cadre as on 1st December, 1987 were determined as selection grade posts for respective grade/cadre. Under paragraph 2(IV) of the said circular, all the category III and IV employees who had put in not less than 12 years' service on or after 1st December, 1987 in the same grade/cadre were made eligible for consideration for selection grade. Under paragraph 2(III), provisions were made in respect of procedure for placement to selection grade. Clause (a) thereof provides that the placement to the selection grade shall be on the basis of seniority subject to the rejection of unfit employees. In view of the said Circular, Mr. Momin who was serving as Assistant Gr. III(D) and had completed 12 years' service as Assistant Gr.III as on 1st December, 1987 was placed to selection grade in the scale of Rs. 1650-2655. Said Shri Momin was further promoted as Assistant Gr. II (D) on 10th March, 1989 and keeping in view his pay in the lower cadre i.e. in the cadre of Assistant Gr.III, his pay was fixed at Rs.2280/-. On the date of introduction of selection grade i.e. on 1st December, 1987, the petitioner had already been promoted to the higher post i.e. that of Assistant Gr. II. The petitioner was, therefore, not entitled to selection grade though he had rendered more than 12 years' service in the cadre of Assistant Gr.III before his promotion on 7th January, 1985. It is on account of the grant of selection grade to Mr. Momin that the anomaly has arisen which has resulted in the higher pay of Mr. Momin than that of the petitioner. Considering such anomaly arising in several

cases, on 1st October, 1993, the Corporation issued Circular No. 29 of 1993. Under the said circular, a Scheme of stepping up was introduced with a view to redressing grievance of many senior officers in respect of the pay fixation vis-a-vis their juniors who were placed in the higher pay bracket on account of grant of selection grade. It was decided to resolve such anomaly by stepping up pay of senior at par with his junior from the date the anomaly arose. The grant of benefit of stepping up had been made subject to several conditions. Condition No. [ii] which is relevant for the purpose of this petition reads as under :

"{ii} The senior employees should have been eligible for appointment to selection grade but for his working in the higher post on or before the date on which the junior was appointed to selection grade. [ In other words, the senior should fulfil all the conditions of placement to selection grade i.e. 12 years' service, found fit for placement to the selection grade etc. ]; and "

4. It is undisputed that an anomaly in the pay of the petitioner and Mr. Momin who is junior to him has arisen. Such anomaly caused is on account of grant of selection grade to Mr. Momin. In view of the above referred circular No. 29 of 1993, it must, therefore, be held that the petitioner would be entitled to claim stepping up of pay at par with that of Mr. Momin from the date on which the anomaly arose i.e. from 10th March, 1989 provided he fulfils all the conditions enumerated in the said Circular including Condition [ii] reproduced hereinabove.

5. Under Circular No. 22 of 1992, selection grade would be admissible to an employee on his completing 12 years' service in the same grade/cadre on the basis of seniority cum fitness. It is evident that the petitioner had completed 12 years' service in the cadre of Assistant Gr.III on 1st December, 1987. The question would, therefore, be whether on 1st December, 1987, he was eligible to placement to selection grade on the basis of seniority cum fitness. Learned advocate Ms. Pahwa has submitted that on 1st December, 1987, a decision was taken to initiate the disciplinary proceedings against the petitioner and that such disciplinary proceeding was initiated by issuing memorandum of charge on 2nd January, 1988 and under order dated 13th September, 1988, the

petitioner was visited with a punishment of withholding of one increment. In view of the said disciplinary proceedings and the punishment imposed upon the petitioner, the petitioner cannot be said to be fit for placement to selection grade as on 1st December, 1987.

6. Learned advocate Mr. Brahmbhatt appearing for the petitioner has opposed this proposition. He has submitted that the disciplinary action can be said to have been initiated upon issuance of memorandum of charge. In the present case, memorandum of charge was issued on 2nd January, 1988 and, therefore, benefit of grant of selection grade to the petitioner couldn't have been withheld on 1st December, 1987 for the disciplinary proceedings which were initiated on 2nd January, 1988. He has relied upon a circular of the Corporation issued on 28th June, 1994 and has submitted that only those of the officers could be deprived of the grant of selection grade who;

- (i) were under suspension;
- (ii) in respect of whom a charge sheet has been issued and the disciplinary proceedings are pending;
- (iii) officials in respect of whom prosecution for criminal charge is pending.

7. I am afraid, I cannot accept these contentions. Said Circular has been issued in respect of issuance of "Vigilance Clearance" for the purpose of promotion. The aforesaid conditions are enumerated in respect of the officers for whom "vigilance clearance" shall not be issued. Said criteria cannot be pressed into service for determining whether one could be promoted in case disciplinary action is contemplated against him. In my view, in the case of the petitioner, a decision to initiate the disciplinary proceedings was taken before 1st December, 1987, the date on which the petitioner would become entitled for consideration for placement to selection grade. In the face of contemplated disciplinary proceedings against the petitioner, petitioner's case for placement to selection grade could not have been considered as on 1st December, 1987. In view of the above referred condition {ii}, the petitioner would not be entitled to benefit of stepping up of pay account of the penalty imposed upon him for the misconduct proved against him.

8. Mr. Brahmbhatt has further relied upon the order dated 18th September, 1995 made in favour of one Shri SK

Thakur who on completion of disciplinary proceedings and having served the order of penalty was placed to selection grade. He has submitted that a similar treatment can be offered to the petitioner also. The petitioner having served the penalty and the period of penalty having been completed on 31st December, 1989, the petitioner shall be given the benefit of stepping up of pay with effect from 1st January, 1990. The contention cannot be accepted. Mr. Thakur was serving as Assistant Gr.III while he was visited with a punishment, he has been placed to selection grade in the same cadre i.e. in the cadre of Assistant Grade III. The case of said Shri Thakur cannot be compared with that of the petitioner who is claiming benefit of stepping up of pay.

9. No other contention has been raised by Mr. Brahmbhatt. Petition is dismissed. Rule is discharged. There shall be no order as to costs.

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\*Vyas